

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,734

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her emergency assistance funds to pay a security deposit on an apartment she has leased.

FINDINGS OF FACT

1. The petitioner lives with her two small sons in the home of her mother. She receives ANFC of \$616 per month and Food Stamps of \$189 per month. She has lived with her mother since March of 1995, and pays her \$350 per month as rent.
2. The petitioner has known since she moved into her mother's small house that the tenancy was to be temporary. The home is a small one with five people living in it. The petitioner and her children sleep in one room. In early June of 1995, the petitioner's mother asked her to find another place to live right away. She told the petitioner that she felt her house was too cramped and that she needed to have a water problem fixed which meant that she would have to have the water turned off at some time in the near future, probably sometime in July.
3. The petitioner had already paid her mother \$250 towards her June's rent, but she began to look for a place she could move to immediately. On June 15, 1995, she found an apartment and on June 20, 1995, signed a rental agreement and placed almost a half month's rent down (\$155) for the month of June. The landlord asked for a security deposit of \$385 by June 23, 1995, before he would allow the petitioner to move in. In spite of her new deposit needs, the petitioner paid her mother an additional \$100 from the ANFC check issued on June 16, 1995, for the balance of the June rent.
4. On June 20, 1995, the petitioner asked the Department of Social Welfare to pay the \$385 security deposit. In support of her request she introduced a copy of the rental agreement and a letter from her mother stating that she would have to dig up her plumbing system over the next few months and that

there would be days when there would be no water and plumbing. Under those circumstances, the mother did not believe her daughter and grandchildren would be able to live there.

5. The Department denied the petitioner's request for emergency assistance to pay the security deposit on that same day, June 20, 1995. The written reasons given for the denial were available resources greater than her emergency need, a lack of an emergency need, a non-catastrophic situation and lack of a notice of termination of her tenancy in her current housing. Those reasons were further orally explained at the hearing as the Department's belief that the petitioner lived in adequate housing from which she had not received a legal notice to quit and that the petitioner could turn to her mother for assistance who, the Department felt, was charging her excessive rent to live in a crowded small house. The worker felt the mother could easily help her out by refunding June's rent which was paid even though the petitioner found and needed to pay for a new apartment.

6. On June 21, 1995, that denial was reviewed by the District Director who sent the petitioner a letter affirming the decision because:

Your situation does not meet our catastrophic situation requirement. Under the Vermont Rental Housing Health Code it is the responsibility of your landlord to provide water. You can contact Vermont Legal Aid, or Vermont Tenants, Inc., if you would like their help.

By this statement, the Director intended to convey to the petitioner that she had a right to have water until she was evicted from her housing. He stated that had the petitioner been subjected to formal eviction proceedings or if the water had been shut off while the petitioner was still there, his decision might have been different. Otherwise, he did not consider her situation an emergency.

7. The petitioner, at the time of her application, had no other income but her ANFC payments and no resources. Her mother assists her from time to time with expenses but she has to repay her help. On June 23, 1995, after the Department refused to pay the security deposit, her mother paid the new landlord the entire amount of the security deposit, \$385. The petitioner moved in on June 24, 1995. However, she has pursued this appeal because she wants the money to repay her mother, whom she says she still owes \$296.<sup>(1)</sup>

### ORDER

The decision of the Department is affirmed.

### REASONS

Under the regulations of the emergency assistance program:

A. Emergency Assistance to Needy Families with Children shall be granted to eligible families to meet emergency needs only, according to Department standards, when such need cannot be met under any other categorical assistance programs administered by the Department. It is designed to respond quickly to a crisis situation which threatens the destitution of children.

...

C. Except as specifically provided in 2802 (Catastrophic Situations) Emergency Assistance shall be granted to those applicants who have dependent children included in their application only if they:

1. Have received during the 30-day period immediately prior to application net income computed pursuant to Emergency Assistance regulations which is below the applicable ANFC payment level for that size household in similar living arrangements.
2. Have not been disqualified for ANFC or Medicaid benefits because of their refusal to comply with a program eligibility requirement. The duration of the disqualification period for EA will be the same as that for the other program; and
3. Actively pursue all potential sources of income, such as: ANFC, SSI, AABD, Medicaid, Social Security benefits, Veterans benefits, wages, unemployment or workmen's compensation, support, insurance, etc. Pursuit of income means initiating an application prior to a second grant of ANFC-EA, cooperating with requirements for a timely decision, and continuing to cooperate in meeting requirements to maintain such income on an ongoing basis thereafter, and:
4. Have an emergency need which, if not met, will cause destitution; and:
5. Have exhausted all available income and resources . . .
6. Have complied with the employment requirements of 2807.1 as applicable.

The Department has given any number of reasons for denying the petitioner regular emergency assistance. The most obvious reason, however, is that the petitioner simply does not meet the requirement in the first paragraph since she had income at the ANFC payment level for the 30-day period immediately prior to her application. Given this fact, the petitioner cannot get assistance for an "emergency need" unless that need also meets the specific definitions under "catastrophic situation" which is defined as follows:

Any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is a result of failure on the part of the applicant to explore potential resolution of the problem:

. . .

b. A court ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional, serious property damage caused by the applicant; repeated instances of raucous and illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to efforts to correct substandard housing.

. . .

W.A.M. 2802

Constructive Eviction Defined

Constructive eviction is defined as any disturbance caused by a landlord or someone acting on his behalf, causing the premises to become unfit for occupation. The motive for the disturbance, which may be inferred from the act, must have as its intent the eviction of the occupant. No intent needs to be considered when heat or utilities or water are not provided within a reasonable period of time and there is an agreement to furnish these items.

W.A.M. 2802.1

The petitioner does not fit the definition of catastrophic situation because her tenancy has not been terminated by a court ordered eviction nor had her tenancy yet been terminated by the actions of her landlord (her mother) in turning off the water.

Even if some of these more technical requirements of this regulation had been met, the petitioner's request for assistance falls flat primarily because she has not demonstrated any emergency need. She has been living in her mother's home for some four months knowing that she had to make plans to leave in the near future. Nevertheless, she has done nothing to put aside money for a new apartment but has instead continued to pay her mother her full rental allowance, which she continued to pay even after she had paid rent on a new apartment and was looking for a way to pay the security deposit. The mother's need to turn off the water and make repairs to her property may be real, but there appears to be no exigency to that repair which could be scheduled at the mother's convenience. The petitioner's contention that she was in an emergency situation simply has no credibility. At the time of the appeal hearing, some seven days after the denial, the petitioner had been able to pay her security deposit and to move to another apartment. It is obvious in retrospect that the petitioner did have access to resources other than the Department of Social Welfare to help with her security deposit. Her need now to reimburse her mother for the "loan" of the security deposit is not compelling and certainly cannot be classified as an emergency. It must be concluded both that the Department's decision in this matter was supported by its regulations and that the operation of those regulations was not unfair to the petitioner.

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1. After hearing, when the petitioner presented her case before the Board, she stated that she no longer wanted money but a declaration that she had been treated unfairly.